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1 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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4 In re: REFCO INC. SECURITIES: 07-MDL-1902(GEL)
LITIGATION :
5 KENNETH M. KRYE and : 08-Ci v. 07416(GEL)
CHRISTOPHER STRIDE, as JOINT: :
6 OFFICIAL LIQUIDATORS of :
SPHINX LTD., et al, :
7 Plaintiffs :
-against- :
8 ROBERT AARON, et al., :
Defendants :

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Friday, July 8, 2011

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MR. HEDGES: Good morning.
This is Special Master Hedges. I'm
conducting, without any counsel present,
an in camera review of documents
submitted to me in Krye v. Sugrue by Mr.
Christopher Deubert of the Ginsberg &
Burgos firm by letter dated May 5, 2001.
This in camera is further
being conducted pursuant to my Orders on
discovery disputes dated March 24 and
April 27, 2011, in which the latter
includes my notation that any production
shall be subject to an existing Federal
Rule of Evidence 502(d) Order.
I have before me, the
declaration of Mr. Ginsberg in opposition
to defendants, Mark Kavanaugh and Brian
Owens', Motion to Compel the production
of documents.
First, let me apologize to
counsel. We had planned to do this in
camera on the date of a conference with
Judge Rakoff. There was, obviously,
some miscommunication between us. I was
sitting in one room and counsel were

sitting in another room, which is why we
are doing it here today. Let me begin

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Looking at documents.

I have redacted and unredacted copies of every document, most or all of which are e-mail chains. As I go through the documents, I will refer to the first e-mail in a given document as the parent, later e-mails will be called children or a child; and the last e-mail will be the last child or the final child e-mail. I will attempt to keep those conventions as we go through.

First document, CM00000842 through 847. I'm going to begin looking at the documents now. There are several redactions in this document. The first is on Page 844; the redactions continue through 842 to the ultimate child e-mail. The redactions on pages 842 and the first redaction on Page 843 pertain to health issues. These are irrelevant and need not be provided.

On Page 843, 844; and this is beginning on Page 843, with an e-mail

from Mr. Ginsberg to PKF dated June 21, at 12:27 p.m. I'm not prepared to say that the redaction on Page 844, Ginsberg to PKF, dated June 21, 2006, at 10:56 a.m. is irrelevant. It appears to be relevant. It relates to prior communications; and I see nothing including the provision of any legal advice. I will order the e-mail, June 21, 2006, 10:56 a.m., to be turned over unredacted.

That leaves e-mails on Page 843. The first redaction, PKF to Ginsberg, June 21 at 12:59 p.m., is irrelevant, need not be produced. The second two e-mails on Page 843 from Ginsberg to PKF dated June 21 at 12:27 p.m., is protected by privilege and need not be produced; the second dated June 21 from PKF to Mr. Ginsberg is also subject to privilege and need not be produced. So, pages 842 through 847, the only e-mail that should be turned over is from Mr. Ginsberg to PKF dated June 21 at 10:56 appearing on Page 844.

Next document, CM848 through

852; redactions are on pages 848 and 849. These redactions appear in the first set of documents that I reviewed. My rulings are the same. The production or non-production in the first set of documents will apply to this document as these are repeats.

Next, CM853 through 862, redactions appearing on pages 853 through 857. Redactions on page 854 include, as the first redaction, a footer from Mr. Feighery that gives a fax number and e-mail address and a statement of

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confidentiality. There's nothing privileged about that. On the other hand, it's irrelevant and need not be produced. The second redaction on page 854 appeared in the first set of documents I reviewed, as do the redactions on page 855 and 856. The only "original" document to be redacted is the ultimate child e-mail, which appears on page 853. There are two e-mails on this pages; the first is from Mr. Feighery to Patricia Peter and to Andrew Feighery, "June Invoices-Sphinx

Board Information." This is the recoding of a communication between Mr. Feighery about a Plus Funds call. I see nothing here that is privileged and it appears to be relevant. I will order on page 853 the second e-mail, Feighery, June 21, at 1:37 p.m., to be turned over. The ultimate child e-mail on page 853 is from PKF to Feighery; that appears to be subject to the attorney/client privilege, if not work product protection, and I will order that that redaction be sustained.

Next, we have documents CM863 through 873; redactions begin on page 869. The redaction on page 869, again, is irrelevant. It simply has an address, Carnegie Hall Tower, with an e-mail address mailed to Robert Malchman at Plusfunds.com. I don't see anything relevant in that. I will sustain that redaction.

The redactions on page 868 repeat redactions, repeat e-mails, from the first document I looked at. My prior

ruling stands as to that.

On page 867, there are two redactions; page 866, there are two redactions; page 865, the redactions on the top of the page, again, is footer information, including Mr. Feighery's address in Ireland and the like, and a statement of confidentiality. Those are irrelevant. I will not require that to be produced. The second redaction, again, is a copy of an e-mail I looked at in the first set. My prior ruling applies.

On page 864, the bottom e-mail, June 21 at 1:37, is from Mr. Feighery. I ruled on this before. This is a record of a conversation he had on the Plus Funds call. That's to be produced.

The top e-mail on page 864 is a response from Mr. Ginsberg to Mr. Feighery. Mr. Ginsberg is making a request of information from Mr. Feighery. I see no communication that implicates

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attorney/client privilege. I will order

that to be turned over. So, the redactions on page 864 are to be removed and the entire document turned over.

On page 863, again, the entire bottom of the page is Mr. Feighery's footer. It's not privileged, but it's not relevant. It doesn't have to be turned over. The ultimate child e-mail on the top of page 863, I see no communication for the purpose of securing legal advice. I will order the entire page, 863, to be unredacted and turned over.

Next set of documents, pages 874 through 882; redactions begin on page 874 and continue through 878. These repeat e-mails in the first documents, the first set of documents, I looked at. They are duplicative and need not be turned over. My prior rulings apply.

Next pages, 883 through 887. Again, these pages repeat e-mails that were contained in the first set of documents I looked at. My rulings as to the first set of documents apply. This latest set need not be turned over. It

would be duplicative.

The next pages, 888 through 891. The redactions appear on page 888. Again, these are duplicative of the first set of documents I looked at. These need not be turned over. My rulings as to the first set will govern these pages.

The remaining documents I must review, appear from Mr. Ginsberg's affidavit to simply not have been provided to counsel on the grounds that the entire content of the e-mail chains are privileged. I will review each of these documents separately.

Pages 892 through 899, these documents plainly pertain, or e-mail, plainly pertain to legal advice. Other than a number of e-mail which simply speak about times for calls and the like, those are irrelevant. This information is either irrelevant or privileged and none of these pages, 892 through 899, need be turned over.

Pages 900 through 906, with the exception of irrelevant e-mail which

appear on pages 900 and the top of page 901, pages 900 through 906 repeat pages 892 through 899. I have already concluded that the first set of documents, these contain either irrelevant information or privileged information. My rulings as to 892 through 899 will control as to anything subject to privilege. The remainder is irrelevant and merely for

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the purpose of scheduling calls and the like, need not be produced. I will sustain the entire redaction.

Pages 905, 906, Mr. Ginsberg's declaration at page 8 states in paragraph 32 that these documents were produced on or about November 29, 2010. Counsel can confer if the documents were in fact not produced. Mr. Ginsberg should make these available.

Pages 907 through 912 are repeats of pages 892 through 899. My rulings as to the first, that first set of documents, apply to pages 907 through 912. These need not be produced.

Pages 916 through 921, 922

through 925, again, are included within the first set of documents, pages 892 on. My rulings apply. These documents are either irrelevant or privileged.

Pages 927 through 929 also appear in the documents beginning on page 892. The contents are either irrelevant or privileged. 927 through 929 need not be produced. Same rulings as to pages 930, 931; same rulings as to pages 932, 933.

Page 1255 through 1263 are a different set of e-mails. I'm satisfied that pages 1255 through 1263 contain either irrelevant information, such as headers or footers, although the footers, they are irrelevant, there's nothing to do with them.

The content of the e-mail on these pages plainly reflect requests for or giving of legal advice. These documents need not be turned over. I will sustain the non-production. That's 1255 through 1263.

Pages 1264 through 1271, as

stated in Mr. Ginsberg's declaration, are a subset of pages 1255 through 1263. My prior rulings apply. I will sustain the non-production.

I can't find pages 1272 and 1273. These are reflected in paragraph 41 of Mr. Ginsberg's declaration. They may be in the pile. If not, counsel will either have to resolve this among themselves or get me those two pages to look at.

Pages 1274 through 1277 are a subset of pages 1255 through 1263. My prior rulings apply.

Page 9489 is a set of documents pertaining to Mr. Jon Knight, identified as a consultant. Based on Mr. Ginsberg's declaration at paragraphs 43 through 53, I am satisfied that the information contained in these pages,

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21 consistent with the paragraphs of Mr.
22 Ginsberg's declaration, either contain
23 information which is irrelevant, such as
24 headers or footers or information subject
25 to work product, and I will sustain the

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1 non-production of pages 9489 through
2 9555. I will also note that a number of
3 these pages contain e-mail which are
4 duplicative.

5 Next pages, 372 and 373.

6 These are addressed in paragraph 54 of
7 Mr. Ginsberg's declaration. Consistent
8 with Mr. Ginsberg's declaration, it
9 appears that the information contained in
10 pages 372 and 373 are irrelevant, need
11 not be produced.

12 I see nothing in page 397 that
13 is relevant. It need not be produced.

14 Page 668, this page contains
15 irrelevant information and need not be
16 produced.

17 Page 10915 and 916, consistent
18 with Mr. Ginsberg's declarations and my
19 review of the documents as I have re-
20 viewed all other documents this morning,
21 I find nothing on pages 10915 or 916 that
22 are relevant. These need not be produced.

23 Page 10951, I find nothing in
24 this document that is relevant. It need
25 not be produced.

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1 I have pages 10977 and 978 in
2 front of me. These are identified in
3 paragraph 59 of Mr. Ginsberg's
4 declaration. I see nothing in these two
5 pages that is relevant. They need not
6 be produced.

7 Pages 10979 through 10981,
8 these documents are a repeat of pages
9 10977 and 978 with an additional e-mail
10 on the top of page 10979. Again, I see
11 nothing relevant. These need not be
12 produced.

13 Pages 1082 through 1085,
14 again, these are reflective of pages
15 10977, 978, 979 and through 981. Some
16 are duplicative. In any event, the in-
17 formation contained therein is irrelevant.
18 None of these documents need be produced.

19 Pages 986 through 988, I see
20 nothing relevant in these pages. These
21 need not be produced.

22 Pages 1090 through 1095,
23 again, with one or two exceptions of
24 child e-mails, these repeat prior pages.
25 Nothing is relevant. These documents

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1 need not be produced.

2 Last, pages 11106 through
3 11108, these documents are irrelevant and
4 need not be produced.

5 For the record, I appear to
Page 6

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be missing pages 1272 and 1273. Unless
counsel can work some stipulation out
with regard to those pages, Mr. Ginsberg
should send them to me so I can review
these.

Many of the e-mail chains that
I have looked at this morning are
duplicative of prior e-mail. I fail to
see why counsel could not have worked
some resolution out of that rather than
having me look at everything multiple
occasions. Nonetheless, I have ruled
that some pages are relevant and should
be produced. The majority of the pages,
however, contain either irrelevant in-
formation or information subject to
attorney/client and/or work product
privileges.

Mr. Ginsberg is directed to
prepare a form of order describing what

pages should and should not be produced
and to share that with counsel, along
with the transcript. Thank you.

(Proceeding concluded, 11:07 a.m.)

CERTIFICATION

I hereby certify that the
proceedings in the foregoing matter are
contained fully and accurately in the
stenographic notes taken by me, and that the
copy is a true and correct transcript of the
same.

MIKEY DINTER
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